

ORDINANCE NO. 18-09

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF AUBURN REPEALING AND
REPLACING CHAPTER 112 OF THE AUBURN
MUNICIPAL CODE REGARDING MASSAGE
ESTABLISHMENTS AND TECHNICIANS

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS
FOLLOWS:

Section One: Code Amendment. Chapter 112 of Title XI of the Auburn Municipal Code is hereby repealed and replaced in its entirety as shown in Exhibit A attached hereto and incorporated by this reference.

Section Two: California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

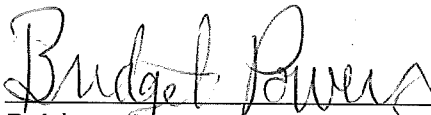
Section Three: Severability; Continuation of Provisions. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the

rules adopted hereby. The City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. To the extent the provisions of the Auburn Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section Four: Inconsistent Provisions. Any provision of the Auburn Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

Section Five: Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall cause the same to be published once in a newspaper of general circulation within fifteen (15) days after its adoption.

DATED: July 9, 2018


Bridget Powers, Mayor

ATTEST:



Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 9th day of July, 2018 by the following vote on roll call:

Ayes: Spokely, Berlant, Kirby, Maki, Powers

Noes:

Absent:



Amy Lind, City Clerk

EXHIBIT A

CHAPTER 112: MESSAGE ESTABLISHMENTS AND TECHNICIANS

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General Provisions

112.001 Purpose and intent.

It is the purpose and intent of the City of Auburn to comply with California law while also protecting the health, safety, and welfare of the inhabitants of the city through the enactment of standards of professional competence and operational requirements which promote the therapeutic use of massage therapy.

This chapter is not intended to be exclusive and compliance with city regulations will not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal services businesses including, without limitation, all zoning applications; business license regulations; building, fire, electrical, and plumbing codes; and health and safety laws and regulations applicable to professional or personal services businesses.

The California State Legislature implemented uniform statewide regulations pertaining to massage therapy and massage establishments (enacted by AB 1147 in 2014 and extended by AB 2194 in 2017 to January 1, 2021) now codified in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing at section 4600 et seq.), hereinafter referred to as the Massage Therapy Act, which created a statewide system for issuing massage worker permits, thereby preempting local permitting systems and requirements. The statewide permitting system is administered by the California Massage Therapy Council (CAMTC).

The Massage Therapy Act authorizes local jurisdictions to enforce certain business licensing and to establish reasonable health and safety requirements for massage establishments, not in conflict with

the Massage Therapy Act. To enable the city to carry out the local regulation and review of massage establishments found in the Massage Therapy Act, the city must maintain massage establishment regulations in the Auburn Municipal Code.

The city wishes to promote the ethical practice of massage therapy as an important healing art and to prevent and discourage the misuse of massage therapy as a front for prostitution activities in violation of the law, including, but not limited to, subdivisions (a) and (b) of section 647 of the California Penal Code, as may be amended.

The enhancement of the city's reasonable regulations on the operation of massage establishments and the conduct of all massage service providers will serve to reduce the risk of potentially injurious and illegal activity.

This chapter establishes a local regulatory system for massage establishments to operate within the city.

112.002 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

APPLICANT means any person that seeks a massage establishment permit as required by this chapter.

APPROVED SCHOOL OF MASSAGE means any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of massage therapists, which school requires a resident course of study of not fewer than 200 hours to be given before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning

showing the successful completion of such course of study. Schools offering correspondence course(s) not requiring actual attendance of class shall not be deemed recognized schools. Schools not approved by the state of California under the provisions of section 4601(a) of the California Business and Professions Code or an equivalent out of state school shall not be deemed recognized schools.

CALIFORNIA MASSAGE THERAPY COUNCIL (CAMTC) means the California Massage Therapy Council created pursuant to Business and Professions Code section 4602(a).

CERTIFICATE means the certificate, or conditional certificate, issued by CAMTC under to Business and Professions Code sections 4601, 4604, 4604.1, and 4604.2 to massage therapists and to massage practitioners, as those terms are defined in Business and Professions Code section 4601.

CITY means the City of Auburn.

COMPENSATION means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

CONVICTED means having entered a plea, or receiving a verdict, of guilty. **CONVICTED** also includes having entered a plea of nolo contendere.

INDEPENDENT CONTRACTOR means a person who contracts to do work for another person according to his or her own processes and methods; the contractor is not subject to another's control except for what is specified in a mutually binding agreement for a specific job.

MANAGER means a person who supervises, inspects, directs, organizes, controls, or in any other way is responsible for or in charge of the conduct of the activities within a massage establishment.

MASSAGE, MASSAGE THERAPY, and/or MASSAGE SERVICES means the systematic and scientific manipulation and treatment involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external surfaces of the body with hands, apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other similar preparations. Massage therapy scope of practice does not include diagnosis, prescribing of drugs or medicines, spinal or other joint manipulations, nor any service or procedure for which a license to practice medicine, chiropractic, physical therapy, acupuncture, or podiatry is required by law.

MASSAGE ESTABLISHMENT means a fixed place of business, premises, facility or membership club where any person gives, performs or administers massage for compensation.

MASSAGE ESTABLISHMENT PERMIT means a massage establishment permit issued under this chapter by the City of Auburn.

MASSAGE PROFESSIONAL means any person who performs or administers to another person massage for compensation. Massage professionals shall include massage practitioners and massage therapists.

MOBILE MASSAGE SERVICES means services in which a massage professional gives, performs or administers to another person a massage for compensation at a location other than a massage establishment permitted pursuant to this chapter.

OWNER means any and all owners of a massage establishment including any of the following persons:

- (1) A sole provider as defined in this section;
- (2) Any general partner of a general or limited partnership that owns a massage establishment;
- (3) Any person who has an ownership interest in a corporation that owns a massage establishment;
- (4) Any person who is a member of a limited liability company that owns a massage establishment;
- (5) A massage professional acting as an independent contractor as defined in this section;
- (6) All owners of any other type of business association that owns a massage establishment.

PERSON means any natural person, individual, group, firm, association, partnership, corporation, company, sole proprietorship, or any other legal entity.

POLICE CHIEF means the chief of police of the City of Auburn and/or his or her designee.

SOLE PROVIDER means a massage establishment where the owner owns 100 percent of the business, is the only person who provides

massage services for compensation for that business, and has no other employees or independent contractors.

112.003 Requirements for massage establishments.

(A) It is unlawful for any person to own, conduct, operate or maintain a massage establishment within the city without having a valid massage establishment permit issued pursuant to this chapter. Massage establishment permits shall also be required of any permanent or semi-permanent seated massage or reflexology installation. Applicants who have an existing massage establishment permit in good standing at the time of the enactment of this chapter shall submit an application for a massage establishment permit within 60 days of the enactment of this chapter.

(B) It is unlawful for any person to own, conduct, operate or maintain a massage establishment within the city unless all persons providing massage services for the massage establishment each hold a diploma or certificate of graduation from an approved school of massage.

112.004 Advertisements.

It is unlawful for any person to advertise massage services within the city without complying with the requirements provided for in this chapter.

Massage Establishment Permits

112.010 Massage establishment permit—Application.

- (A) An application for a massage establishment permit shall be made by the owner, as defined in section 112.002. Such application shall designate the person or persons who will be the manager, if applicable, of the premises.
- (B) All applications for permits shall be filed with the police chief on such forms as he or she may prescribe, and shall contain such information as the police chief shall reasonably deem necessary for the proper processing of the application; provided, however, that all persons certified pursuant to Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions Code shall be exempt from submitting to any test, medical examination, or background check, including a criminal background check or requiring submission of fingerprints for a federal or state criminal background check, and from complying with education requirements beyond what is required by Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions Code. The application for a permit does not authorize the operation of a massage establishment unless and until such permit has been granted.
- (C) Subject to the exemption of subsection (B) of this section, any application for a massage establishment permit shall contain the following information:
- (1) The full true name and any other names used by the applicant. If the applicant is:
- (a) An individual, the individual shall state his or her full legal name.

- (b) A partnership, the partnership shall state its complete name, address, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any. In addition, the application must designate the person who will provide all information required by this chapter.
 - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacities of all officers, directors, and/or members, and/or manager(s), and the name of the registered agent and the address of the registered agent for service of process. In addition, the application must designate the person who will provide all information required by this chapter.
 - (d) A limited liability company, or other business association, the company shall provide its complete name, address, the names of all principals, directors, and/or managers, its articles of organization and operating agreement. In addition, the application must designate the person who will provide all information required by this chapter.
- (2) The true, full and precise name under which the massage establishment is to be conducted, as well as any and all names under which the massage establishment is to be advertised.

- (3) The address where the massage establishment is to be located and all telephone numbers for the massage establishment.
- (4) The name and address of the owner of the real property upon or in which the proposed massage establishment is to be conducted and, if applicable, the lessor. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease.
- (5) The current residential address and telephone number of the owner, as well as the manager (if the manager is a different person) who will be principally in charge of the operation of the massage establishment, and the previous residential addresses and business addresses within the previous five years, if any.
- (6) The applicant's height, weight, eye color, and hair color.
- (7) Written proof to the satisfaction of the city that the applicant is at least 18 years of age.
- (8) The applicant's business, occupation or employment history for the five years immediately preceding the date of the application.
- (9) The massage or similar business license history of the applicant, including whether such person, previously operating in this city or another city, county or state under a license or permit, has had such license or permit revoked

or suspended; and the reasons and dates for any such revocation or suspension.

- (10) All criminal convictions, except minor traffic violations.
- (11) Proof of diplomas or certificates of graduation from an approved school of massage of all proposed massage professionals and other employees or independent contractors who are or will be employed or retained in the massage establishment.
- (12) A clear, color photocopy of a valid, government issued identification card.
- (13) A complete set of fingerprints (LiveScan). The applicant shall be responsible for payment of any fingerprinting fees. Applicants in good standing as determined by the police chief are exempt from this requirement.
- (14) Authorization for the city, its agents, and employees to seek verification of the information contained in the application.
- (15) Such other identification and information as the police chief may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application.
- (16) A current and valid policy of insurance issued by an insurance company authorized to do business in the state of California evidencing that the applicant is insured under

a liability insurance policy providing minimum coverage of \$1,000,000 for injury or death to any one person arising out of the operation of any massage establishment and the administration of a massage. Proof of insurance must be provided within 30 days of issuance of a massage establishment permit.

(17) Proof of current City of Auburn business license for the massage establishment.

(18) A statement in writing and dated by the person providing the information, that he or she certifies under penalty of perjury, that all information contained in the application is true and correct.

(D) In the event that the police chief requires further information, or deems the application incomplete, the applicant shall be notified in writing of the required information within 20 calendar days of submitting the application. Additional information shall be provided within 15 calendar days of the date of the request, after which time the application shall be deemed abandoned. Abandoned and incomplete applications shall be denied.

112.011 Term of massage establishment permits.

A massage establishment shall be issued for a term of two years. It may be renewed by the police chief for additional two-year periods upon application by the permittee unless the permit is suspended or revoked in accordance with sections 112.018 and 112.019. An application for renewal shall be accompanied by a nonrefundable fee

as established by resolution adopted by the City Council, as amended from time to time.

112.012 Massage establishment permit fee.

Every application for a massage establishment permit shall be accompanied by a nonrefundable fee as established by resolution adopted by the City Council, as amended from time to time. The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by federal, state or local law. Applicants who have an existing massage establishment permit in good standing at the time of the enactment of this chapter are exempt from this fee requirement.

**112.013 Massage establishment permit issuance—
Investigation—Grounds for denial.**

(A) Upon receipt of a completed massage establishment permit application, the police chief shall conduct an investigation, including an inspection of the massage establishment, if applicable, to ascertain whether a permit should be issued as requested. The police chief shall, within 45 calendar days of receipt of the completed application, approve, condition or deny the permit.

(B) The police chief may deny a permit provided for in this chapter if he or she finds any of the following:

(1) The applicant, any owner, or any person directly engaged, employed, or retained in the massage establishment, has:

- (a) Been convicted of a violation of any provision of law pursuant to which a person is required to register under the provisions of Penal Code section 290, or conduct in violation of California Penal Code sections 266h, 266i, 314, 315, 316, 318, subsections (b) or (d) of Penal Code section 647, Penal Code sections 653.22 or 653.23, as may be amended, or convicted of an attempt to commit or conspiracy to commit any of the above-mentioned offenses, or any other crime involving dishonesty, fraud, deceit, or moral turpitude or when the prosecution accepted a plea of guilty or nolo contendere to a charge of a violation of California Penal Code sections 415 or 602, as may be amended, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage.
- (b) Been convicted of a violation of Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, as may be amended.
- (c) Been convicted of any offense in any other state or US territory, which is the equivalent of any of the above-mentioned offenses.
- (d) Been subjected to a permanent injunction against the conduction or maintaining of a nuisance pursuant to sections 11225 through 11235 of the California Penal

Code, as may be amended, or any similar provisions of law in a jurisdiction outside the state of California.

- (e) Committed an act in another jurisdiction which, if committed in this state, would have been a violation of law and which, if done by a permittee under this chapter, would be grounds for denial, suspension or revocation of the permit.
- (f) Committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.
- (g) Had a massage establishment permit or massage therapist/practitioner permit or other similar license or permit denied, suspended or revoked for cause by the city, any state, local agency or other licensing authority, or has had to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked.
- (2) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application or in any documentation required to be filed in conjunction with said application.
- (3) The application does not contain all the information required by section 112.010 and applicant fails to complete the application after having been notified of any additional information or documents required.
- (4) The applicant is not at least 18 years of age.

- (5) The massage establishment, as proposed, does not comply with all applicable laws, including, but not limited to, health, zoning, fire, building, and safety requirements and standards imposed by the laws of the state and the ordinances of the city, including this chapter.
 - (6) The applicant failed to obtain all the necessary approvals from the necessary city departments or other governmental agencies, including, but not limited to, the city's development services department.
 - (7) The applicant has refused to or cannot meet the requirements established by this code.
 - (8) The required fee(s) have not been paid and/or any other requirements of this chapter have not been satisfied within the time specified.
 - (9) The massage establishment is proposed in the same location in which a massage establishment has previously been closed due to criminal activity within one year prior to the date of the application.
- (C) Notwithstanding subsection B, the applicant shall not be denied a permit solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under section 4852.01 of the California Penal Code, as may be amended, or on the basis that he or she has been convicted of a misdemeanor.
- (D) If the police chief, upon completion of the investigation, determines the applicant does not fulfill the requirements set

forth in this chapter, the police chief shall deny the application by dated written notice to the applicant. The applicant shall have the right of appeal as set forth in section 112.014.

- (E) Upon issuance of any permit, the police chief may limit the permit by any condition reasonably necessary to preserve the intent and purpose of this chapter.

112.014 Appeal from police chief determination—Permit conditions and denials.

The police chief shall cause a written notice of his or her decision to issue, condition or deny a permit to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested. An applicant aggrieved by the police chief's decision to condition or deny a permit may appeal such decision to the City Council by filing a written notice with the city clerk within 14 calendar days of the applicant's receipt of the police chief's written notice of decision. If an appeal is not filed within such time, the police chief's decision shall be final.

112.015 Hearing—Scheduling.

Upon appeal to the City Council, the permit application shall be scheduled by the city clerk for a public hearing within 45 calendar days, or as soon thereafter as is practicable.

112.016 Hearing—Notice.

- (A) The hearing shall be noticed in accordance with the Ralph M. Brown Act.
- (B) Notice of hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of

not less than five calendar days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five calendar days in advance of the hearing.

- (C) The city clerk may give such additional notice of hearing as it deems appropriate in a particular case.

112.017 City Council action.

Following a public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances, or it may deny the issuance of the permit if it finds any of the grounds specified in section 112.013(B). The decision of the City Council shall be final.

112.018 Suspension and revocation—Notice.

Any permit issued under the terms of this chapter may be suspended or revoked by the police chief in writing upon determining that any of the grounds specified in section 112.019 exist. No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the police chief. Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted at least five calendar days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Service of notice may be either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her address as it appears in his or her application for a permit. The hearing must be held within 10 calendar days of the date of service of notice.

112.019 Grounds for suspension and revocation of an active permit.

Any permit issued under the terms of this chapter may be suspended or revoked if any permittee, his or her agent, employee, or independent contractor:

- (A) Has violated or failed to comply with the terms and conditions of the permit.
- (B) Does any act which violates any of the grounds for denial of the permit.
- (C) Has violated any other provision of this chapter or any federal, state or local law or regulation relating to his or her permitted activity.
- (D) Has engaged in or permitted misconduct substantially related to the qualifications, functions or duties of the permittee.
- (E) Conducts the massage establishment in a manner contrary to the peace, health, or safety of the public.
- (F) Has knowingly made any false, misleading or fraudulent statement of material fact in the application or in any documentation required to be filed in conjunction with said application.
- (G) Has been convicted of any of the crimes identified in section 112.013(B)(1)(a), (B)(1)(b) or (B)(1)(c).
- (H) Engages in unprofessional conduct, including, but not limited to, the following:

- (1) Engaging in sexually suggestive advertising related to massage services.
- (2) Engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation.
- (3) Engaging in sexual activity while providing massage services for compensation.
- (4) Practicing massage on a suspended or revoked permit.
- (5) Practicing massage without a permit.
- (6) Providing massage of the genitals or anal region.
- (7) Providing massage of the female breasts without the written consent of the person receiving the massage and a referral from a licensed California health provider.
- (8) Dressing while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in any of the following:
 - (a) Attire that is transparent, see-through, or substantially exposes the massage professional's undergarments.
 - (b) Swim attire, if not providing a water based massage modality approved by the CAMTC.
 - (c) A manner that exposes the massage professional's breasts, buttocks, or genitals.

(d) A manner that constitutes a violation of section 314 of the California Penal Code, as may be amended.

(e) A manner that is otherwise deemed by the CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.

112.020 Appeal from police chief determination—Permit renewals, suspensions and revocations.

Any permittee aggrieved by the decision of the police chief in refusing to renew, suspending or revoking a permit may, within 14 calendar days from the issuance of the police chief's written decision, appeal to the City Council by filing a written notice with the city clerk. During the pendency of the appeal to the City Council, the permit shall remain in effect. If such appeal is not filed within 14 calendar days, the decision of the police chief shall be final. If an appeal is filed in a timely manner, the City Council shall, after notice as provided in section 112.016, hold a hearing on the appeal, and deny the renewal for any of the grounds specified in section 112.013 or suspend or revoke the permit for any of the grounds specified in section 112.019. The City Council's decision shall be final.

112.021 New permit application after denial, revocation or suspension.

If a massage establishment permit is suspended or revoked pursuant to this chapter, no permit shall be granted to the former permittee to conduct or carry on a massage establishment within one year after such suspension or revocation.

Furthermore, when an application for a permit is denied for cause, no new application for a permit from the same person shall be accepted within one year after denial unless the applicant can show a material change in his or her situation that would justify the issuance of such permit.

Massage Establishment Operating Requirements

112.022 Minors.

It is unlawful for any person to employ or retain anyone under the age of 18 years as a massage professional. It is unlawful for any person under the age of 18 to perform services as a massage professional.

112.023 Health requirements.

(A) It shall be the responsibility of a massage professional to refrain from providing massage services, if the massage professional has reason to believe that he or she has any communicable or contagious disease, any open wound of any nature, or any other condition which may be hazardous to the health of a client. Any massage professional having reason to believe that he or she may have any such disease or condition shall promptly notify his or her employer, or, if the massage professional is an independent contractor, to notify the person with whom he or she has been retained, and it shall thereafter be unlawful for the employer or owner to utilize the services of the massage professional unless the disease or condition is no longer present.

(B) Whenever the manager has reason to suspect that a massage professional has a communicable or contagious

disease, he or she shall require the suspected individual to have an examination by a licensed physician. If the massage professional is found to have a disease or condition which may be hazardous to the health of a client, his or her employment or services rendered under contract shall be discontinued until reinstatement as a massage professional is approved in writing by a licensed physician certifying that the massage professional is free from communicable or contagious diseases.

112.024 Operating requirements for massage establishments—General.

- (A) It is unlawful and a public nuisance to own, conduct, control, or operate a massage establishment unless the owner or manager designated in the application for the massage establishment is present within such massage establishment at all times.
- (B) An owner and/or manager shall be responsible for the conduct of all massage professionals while they are on the massage establishment premises. Any act or omission of any massage professional, whether an employee or an independent contractor, constituting a violation of the provisions of this chapter shall be deemed an act or omission of the owner or manager for the purposes of determining whether the massage establishment permit shall be revoked, suspended, conditioned, denied, or renewed.
- (C) No massage professional shall provide massage of the genitals or anal region of any client or the breasts of any female client without the written consent of the female client and a

referral from a licensed California health care provider, nor shall any owner or manager of a massage establishment allow or permit such massage to the above specified areas. A massage shall not be given and no client shall be in the presence of a massage professional, independent contractor, owner, manager, or other employee of a massage establishment unless the client's genitals and the female client's breasts are fully covered by a non-transparent covering.

- (D) The hours of operation of the massage establishment must be posted in the front window, or on the door if there is no front window, and clearly visible from outside the establishment.
- (E) The owner or manager shall immediately provide to the police chief upon request the names and valid photo identification of all employees and independent contractors, the date of hire or termination, and proof of a diploma or certificate of graduation as provided in section 112.010(C)(11).
- (F) All owners, managers, massage professionals, other employees and independent contractors of the massage establishment shall be fully clothed at all times while furnishing massage services. No such individual shall dress while engaged in the practice of massage for compensation in any of the following:
 - (1) Attire that is transparent, see-through, or substantially exposes the individual's undergarments.
 - (2) Swim attire, if not providing a water-based modality approved by the CAMTC.

- (3) A manner that exposes the individual's breasts, buttocks, or genitals.
 - (4) A manner that constitutes a violation of section 314 of the Penal Code, as may be amended.
 - (5) A manner that is otherwise deemed by the CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.
- (G) No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.
- (H) The massage establishment shall be open to inspection by the police chief, the fire chief, the building official, or their authorized representatives of the city during normal business hours of the massage establishment.

112.025 Operating requirements for massage establishments—Facilities.

All owners and managers shall comply with the following operating requirements for massage establishments as well as any other conditions specified by the police chief:

- (A) Structure. Massage establishments shall be carried on in a permanent building. The owner shall obtain all required building permits per the California Building Code (CBC).
- (B) Signs. Any signs shall be in conformance with the current sign ordinances of the city. Each owner and/or manager shall post and maintain, adjacent to the main entrance and the front

of the business, a readable informational sign identifying the premises as a massage establishment.

(C) Services List. Each owner and/or manager shall post and maintain a list of services available and the cost of such services in the lobby of the massage establishment in a conspicuous public place. The services shall be described in English. No owner or manager shall permit, and no person employed or retained by the massage establishment shall offer to perform, any services or charge any fees other than those posted.

(D) Lighting. The interior of the massage establishment shall maintain adequate illumination to make the conduct of employees, independent contractors, and clients within the premises readily discernible. No strobe or flashing lights shall be used.

(E) Ventilation. In each massage room, the owner and/or manager shall provide minimum ventilation in accordance with the applicable building and fire Codes.

(F) Toilet Facilities. A minimum of one toilet and one separate wash basin shall be provided for clients in each massage establishment. The wash basin shall provide soap and hot and cold running water at all times and shall be located within close proximity to the massage rooms. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser or hand dryer shall be provided at the restroom wash basin. Bar soaps shall not be used. A trash receptacle shall be provided in each toilet room.

- (G) Massage Rooms. The room where massage is administered for each client shall have doors that remain unlocked at all times any client is in the room. A separate dressing area and clothing storage area is required where the massage is performed in a place other than where the client changes his or her clothing. Doors to such dressing rooms shall be self-closing.
- (H) Maintenance. Wet and dry heat rooms, shower rooms and bath and toilet rooms shall be thoroughly cleaned and disinfected as needed, but at least once each day the premises are open. All facilities for the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized at least on a daily basis when the massage establishment is in operation.
- (I) Massage Tables. A massage table shall be provided in each massage room and all massages shall be performed on the massage table, with the exception of Thai, Shiatsu, and similar modalities of massage therapy, which may be performed on a padded mat on the floor. No more than one client may occupy a massage table at the same time. Beds and floor mattresses shall not be permitted on the premises.
- (J) Front Door. One front door that enters into the lobby and/or other waiting room shall be provided for client use. All clients and any persons other than employees or independent contractors shall be required to enter and exit through the front door of the massage establishment.

**112.026 Operating requirements for massage
establishments—Operations.**

All owners and managers shall comply with the following operating requirements for massage establishments as well as any other conditions specified by the police chief:

- (A) Sanitation. Each owner and/or manager shall provide and maintain on the premises adequate equipment and supplies for disinfecting and sterilizing instruments used in providing massages. Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and in a sanitary condition. Appliances, apparatus, and equipment shall be disinfected after each use.
- (B) Linen. Shared use of towels or linen shall not be permitted. Towels and linen shall be laundered or changed promptly after each use and stored in a sanitary manner.
- (C) Living Quarters Prohibited. No person or persons shall be allowed to reside, dwell, occupy or live inside a massage establishment at any time. A kitchen, if any, shall be for the sole use of employees and independent contractors, and shall be installed in an employee-only area.
- (D) Persons Consuming Alcohol or Drugs. No person shall enter, be, or remain in any part of a massage establishment while under the influence of an alcoholic beverage or drug unless it is a drug prescribed for that individual. The owner or manager shall not permit any person under the influence of an alcoholic beverage or non-prescribed drug to enter or remain on such premises. Furthermore, no person shall administer or receive a massage while consuming or using an alcoholic beverage or drug unless it is a drug prescribed for that individual.

(E) Recordings. No building or part thereof where massage or massage services are being conducted shall be equipped with any electronic, mechanical or artificial device used, or capable of being used, for recording or videotaping or monitoring the activities, conversation or other sounds in the treatment room or room used by clients. In the event a portable recording device is located within a treatment room, the camera and/or microphone area of the device shall be covered so as to render those capabilities inoperable.

(F) Warning Devices. The presence of any device which can be utilized as an early warning system, to alert the employees or independent contractors of a massage establishment to the presence of law enforcement officers or city authorities is prohibited in any massage establishment. Said devices may include, but are not limited to, light or music dimmers, electronic detection devices, external or internal video equipment and alarm systems other than those used for fire alarms. Standard alert chimes to notify staff that a client has entered are permitted.

(G) Coverings. Each massage establishment shall provide to all clients clean, sanitary, and opaque coverings of a minimum size of 30 inches by 60 inches, capable of covering the clients' specified anatomical areas, including, but not limited to, the genital area, buttocks, and female breasts. No shared use of such covering shall be permitted, and re-use is specifically prohibited unless adequately cleaned prior to its re-use.

(H) Records. Every owner and/or manager shall keep a record of the dates and hours of each treatment or service, the name

and address of the client as confirmed by valid identification, the name of the massage professional administering such service and a description of the treatment or services rendered. These records shall be prepared prior to administering any massage or treatment and shall be retained for a period of two years after such treatment or service.

(I) Hours of Operation. No massage establishment shall be open for business except during the hours of 6:00 a.m. to 10:00 p.m. on any day.

(J) Doors. All exterior doors (except a rear entrance for staff only) and interior doors must remain unlocked during business hours, unless there is no massage establishment staff available to assure the security of clients and massage professionals who are behind closed doors. This subsection shall not apply to sole providers as defined in section 112.002 of this chapter.

(K) Dress Code for Clients and Visitors. Except for a client who is inside a massage room for the purpose of receiving a massage, no clients or visitors shall be permitted in or on the massage establishment premises at any time who are not fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing, sheer clothing, or similar intimate apparel that exposes the breasts, buttocks, or genital area.

(L) Advertising.

(1) Any advertising matter published or distributed shall include in legible print the massage establishment permit number.

(2) No massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that:

(a) Depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than legitimate massage services; or

(b) Depicts individuals in suggestive poses that would reasonably suggest to prospective clients that any service is available other than legitimate massage services; or

(c) Employs language in the text of any advertising that would reasonably suggest to prospective clients that any service is available other than legitimate massage services.

112.027 Operating requirements for mobile massage services.

(A) All equipment and apparatus shall be kept in a clean and sanitary condition and shall be disinfected after each use.

(B) No massage professional performing mobile massage services shall dress while engaged in the practice of massage for compensation in any of the following:

(1) Attire that is transparent, see-through, or substantially exposes the individual's undergarments.

(2) Swim attire, if not providing a water-based modality approved by the CAMTC.

- (3) A manner that exposes the individual's breasts, buttocks, or genitals.
 - (4) A manner that constitutes a violation of section 314 of the Penal Code.
 - (5) A manner that is otherwise deemed by the CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California.
- (C) Each massage professional performing mobile massage services shall have in his or her possession proof of an active and valid massage establishment permit while administering massage.
- (D) Mobile massage services must be performed in accordance with all other conditions as set forth in this chapter, and shall not include any services prohibited from being offered at a massage establishment under this chapter.
- (E) No mobile massage services shall be conducted except during the hours of 6:00 a.m. to 10:00 p.m. on any day.
- (F) No massage professional performing mobile massage services shall provide massage of the genitals or anal region of any client. No massage professional performing mobile massage services shall provide massage to the breasts of any female client without the written consent of the female client and a referral from a licensed California health care provider. A massage shall not be given and no client shall be in the presence of a massage professional performing mobile massage services unless the

client's genitals and the female client's breasts are fully covered by a non-transparent covering.

(G) A list of services shall be available for review of the client or authorized representative of the police chief upon request and shall be described in English. No massage professional shall offer to perform mobile massage services other than those listed.

(H) No person shall administer or receive a mobile massage while under the influence of an alcoholic beverage or drug unless it is a drug prescribed for that individual.

112.028 Display of permit.

Every massage establishment permit issued pursuant to this chapter shall be conspicuously displayed so that it may be easily seen by any client or other person on the massage establishment premises.

112.029 Permit—Non-transferable, change of address or contact information.

Any massage establishment permit issued pursuant to this chapter is valid only at the address, if applicable, and for the person specified therein and cannot be sold, transferred or assigned to any other person. Change of the massage establishment address requires the owner or manager to notify the police chief in writing 10 calendar days prior to the massage establishment moving to a new location and requires an inspection of the massage establishment prior to the massage establishment accepting clients for massage therapy. Failure to notify the police chief of the change of address shall render any permit void and any operation of a massage establishment unlawful.

Exemptions, Violations, and Penalties

112.030 Exemptions.

The following persons and businesses shall be exempt from the requirements of this chapter.

- (A) Persons holding an active and valid certificate to practice the healing arts under the laws of the state of California and their employees and independent contractors, including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses, and licensed vocational nurses, when practicing the healing arts within the scope of an applicable license.
- (B) State-licensed hospitals, nursing homes, sanitariums, physiotherapy businesses, or other state-licensed physical or mental health facilities and their employees or independent contractors.
- (C) Approved schools of massage and their students in training, provided such students provide massage therapy only under the direct personal supervision of an instructor.
- (D) Barbers and cosmetologists who are licensed under the laws of the state of California, while providing massage therapy within the scope of their licenses, provided that such massage therapy is limited solely to the neck, face, scalp, feet, and lower limbs up to the knees, and hands and arms, of their clients.
- (E) Persons who, acting within the scope of their employment, provide massage therapy to semi-professional or professional

athletes or athletic teams, facilities or events, so long as such persons do not practice massage therapy as their primary occupation within city limits.

112.031 Criminal penalties.

It is unlawful and a public nuisance to intentionally violate any of the provisions of this chapter. Violation of this chapter may be charged as either an infraction or a misdemeanor in the discretion of the city attorney.

112.032 Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause of action for injunctive relief.

112.033 Administrative remedies.

In addition to the civil remedies and criminal penalties set forth above, the violation of any provision of this chapter may be subject to administrative enforcement under Chapter 10 of this Code and shall be and is hereby declared a public nuisance subject to summary abatement thereunder and under Chapter 95 of this Code.

112.034 Cumulative remedies, procedures and penalties.

Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

112.035 Separate offense for each day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof.